STATE OF MICHIGAN
IN THE SUPREME COURT

SPECTRUM HEALTH HOSPITALS, and SPECTRUM HEALTH UNITED,

Plaintiffs/Appellees,

v

WESTFIELD INSURANCE COMPANY,

Defendant/Appellant.

Supreme Court No. 151419

Court of Appeals No. 323804

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BRIEF AMICUS CURIAE ON BEHALF OF THE NEGLIGENCE LAW SECTION OF THE STATE BAR OF MICHIGAN AND IN SUPPORT OF PLAINTIFF/APPELLEE SPECTRUM HEALTH

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AMICUS CURIAE'S INTEREST

The Negligence Law Section is a practice section within the State Bar of Michigan. With roughly 2,000 members, the Negligence Law Section is one of the largest practice sections. Its members are attorneys who typically practice negligence law in Michigan. Its membership is composed of roughly equal numbers of plaintiff's attorneys who bring negligence claims and defense attorneys who defend against such negligence claims.

The Negligence Law Section seeks to protect the right to jury trial in negligence cases. It also promotes the fair, equitable, and speedy resolution of negligence claims in Michigan. To further those goals, the Section often conducts educational programs for its members (and for the public) on topics concerning negligence law in Michigan, including most recently a panel discussion on proposed legislative efforts to amend the No-Fault Act. Generally speaking, the Section believes that fundamental changes to the No-Fault Act, and how it has long been interpreted, should be come from the Legislature, not this Court.

The Negligence Law Section is concerned about this case because it challenges long-standing precedent in Michigan affirming that persons injured while maintaining a motor vehicle in Michigan are entitled to benefits under the No-Fault Insurance Act, MCL 500.3101, et seq. For more than 35 years, the law in Michigan has allowed persons who are injured while maintaining a motor vehicle to recover benefits under the No-Fault Act. See generally, *Miller v Auto-Owners Ins Co*, 411 Mich 633, 309 NW2d 544 (1981). While the No-Fault Act has often been amended, no effort has been made legislatively to change this Court's ruling in *Miller v Auto-Owners*, supra. This case could change the status quo.

The Negligence Law Section seeks consistent interpretation of the laws in Michigan, including statutes governing negligence law in Michigan such as the No-Fault Act. The

doctrine of stare decisis is viewed by the Negligence Law Section as being integral to its goal of promoting fair, equitable and speedy administration of justice in negligence cases. This case calls into question what has long been well-settled law in Michigan. Accordingly, the Negligence Law Section asks this Court not to overrule *Miller v Auto-Owners*, supra.

QUESTIONS PRESENTED

This Court granted oral argument on the Application for Leave to Appeal filed by Westfield Insurance Company, and specifically asked the parties to address the following: 1) whether *Miller v Auto-Owners Ins Co* remains a viable precedent in light of *Frazier v Allstate*, [490 Mich 381, 808 NW2d 450 (2011)] and *LeFevers v State Farm*, [493 Mich 960, 828 NW2d 678 (2013) and 2) if so, whether *Miller* [*v Auto-Owners*] should be overruled.

The Negligence Section, as amicus curiae , answers "yes" to the first question and "no" to the second question. For the reasons stated below, *Miller v Auto-Owners* is, and should remain, a viable precedent in Michigan. As such, it should not now be overruled.

Alternatively, if this Court disagrees, and instead reverses *Miller v Auto-Owners*, this Court's decision, under the circumstances, should be given prospective application only.

STANDARD OF REVIEW

The standard of review is de novo because this case involves a question of statutory interpretation. See generally, *Hunter v Hunter*, 484 Mich 247, 257, 771 NW2d 694 (2009).

INTRODUCTION

This case poses the very same question that this Court previously addressed more than thirty-five years ago when it decided Miller v Auto-Owners in 1981. Simply stated, this case asks whether a person who is injured while maintaining a motor vehicle is entitled to recover "personal protection insurance" (or PIP) benefits under MCL 500.3105(1), which provides that "an insurer is liable to pay [PIP] benefits for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle".

Unlike *Frazier v Allstate* and *Lefevers v State Farm*, this case does not address the application of one of the specific exceptions for parked vehicle cases under MCL 500.3106. Here, the parties have agreed that no parked vehicle exception applies. Accordingly, this case concerns only whether no-fault PIP benefits can be recovered in a maintenance case, where the motor vehicle is not moving, and thus, stationary while undergoing the repairs.

Spectrum contends that PIP benefits can be recovered under MCL 500.3105(1). Westfield argues that PIP benefits can be recovered only if an exception to the parked vehicle exclusion under MCL 500.3106(1) applies to the circumstances involved in this case. Spectrum agrees that no exception applies. Thus, the question is whether PIP benefits can be recovered when injuries are sustained while performing maintenance on a non-moving vehicle, regardless of whether a parked vehicle exception can be applied.

In *Miller v Auto-Owners*, this Court affirmed that PIP benefits can be recovered by a person injured while maintaining a motor vehicle, even though motor vehicles are also typically parked when maintenance is performed. In sum, this Court recognized that the No-Fault Act does not require that a parked vehicle exception be satisfied to recover PIP

benefits in a maintenance case. Instead, MCL 500.3105 and MCL 500.3106 are separate, complementary provisions, establishing an injured person's right to recover PIP benefits.

Since this Court's ruling in *Miller v Auto-Owners*, the Legislature has amended the No-Fault Act several times – including an amendment to the parked vehicle exclusion that precluded recovery of no-fault PIP benefits when an injured person is also entitled to workers compensation benefits– without changing the law regarding maintenance cases.[1] It is probably safe to say that most PIP claims do not involve injuries sustained while maintaining motor vehicles. Moreover, to the extent such injuries do happen, PIP insurers presumably adjusted long ago for any increased liability from maintenance cases. Thus, the potential cost savings, if any, to PIP insureds is unlikely to be significant because maintenance claims are not common enough to reduce premiums much if now invalidated.

While PIP insurers may claim that motorists will benefit from lowered premiums if *Miller v Auto-Owners* is reversed, there is scant evidence to suggest that prior court rulings limiting entitlement to recover PIP benefits have resulted in decreased premiums. Thus, there is no clear benefit to now reversing *Miller v Auto-Owners,* nor will substantial harm result, if instead, stare decisis is applied and this Court adheres to its prior ruling. In contrast, barring such claims now would not only disrupt the existing no-fault system, it would prevent injured persons from recovering PIP benefits for which premiums were paid.

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[1]In 1982, the Legislature addressed the trucking industry's concerns that its employees would be entitled to both PIP and workers compensation when injured during loading/unloading if the parked vehicle section was not changed. Despite this Court's prior ruling in *Miller v Auto-Owners* in 1981, no one evidently was concerned afterwards about injured persons recovering PIP benefits in maintenance cases. To date, the Legislature has made no effort to amend the law to deny PIP benefits in maintenance cases. Thus, this Court's ruling in *Miller v Auto-Owners* still stands today.

The Negligence Law Section asks this Court to deny leave to appeal in this case because the lower courts' ruling comports with the well-settled law in Michigan, and there is simply no compelling reason to now hold 35 years later that PIP benefits cannot be recovered when a person is injured while motor vehicle maintenance is being performed. Stare decisis may not be an "inexorable command", but when there is no clear upside to reversing well-established law in Michigan, as in this case, this Court should decline to reinterpret a statute's meaning, even if the statute could have been more artfully worded.

The Negligence Law Section strongly believes that consistent interpretation of a statute's meaning continues to be essential to the fair, equitable, and speedy resolution of civil cases in Michigan. Where the question is PIP coverage, and all parties have operated for more than 35 years on the assumption that there is coverage when a person is injured while maintaining a motor vehicle, no harm results from adhering to that understanding, whereas a contrary result only creates more confusion about when PIP benefits are owed.

STATEMENT OF FACTS

The facts in this case are not disputed. Shawn Norman injured his right hand while changing a flat tire on a motor vehicle owned by his parents. Astutely, Shawn did not attempt to change the tire on his parents' motor vehicle while he was also operating it. Nonetheless, he was injured in his parents' driveway when the vehicle fell off the car jack. See Spectrum's Brief in Opposition to Westfield's Application for Leave to Appeal, pp 12-13; and its Supplemental Brief in Opposition to the Application for Leave to Appeal, pp 1-2.

Subsequently, Shawn received medical treatment, including surgery, at Spectrum Hospital in Grand Rapids. Because Westfield insured the vehicle Shawn was maintaining,

Spectrum made a claim with Westfield seeking reimbursement for Shawn's medical bills. Westfield denied Spectrum's claim, stating that Shawn was not injured in a covered motor vehicle accident because he was maintaining a parked vehicle at the time that he was injured and no exception to the parked vehicle exclusion under MCL 500.3106(1) applied.

Spectrum filed a lawsuit against Westfield to recover PIP benefits as payment for Shawn's unpaid medical bills with Spectrum. Both parties moved for summary disposition. See Spectrum's Brief in Opposition to Westfield's Application for Leave to Appeal, pp 13-14; and its Supplemental Brief in Opposition to the Application for Leave to Appeal, pp 2-4.

Westfield contended that PIP benefits were not owed under MCL 500.3106(1) because Shawn was injured while performing maintenance on a parked motor vehicle and no exception to the parked vehicle exclusion applied. Spectrum, in turn, argued that PIP benefits were owed under MCL 500.3105(1), regardless of whether a parked vehicle exception applied, because of this Court's prior decision in the *Miller v Auto-Owners* case.

The trial court denied Westfield's motion for summary disposition, and instead, granted summary disposition in favor of Spectrum, based on this Court's ruling in the *Miller v Auto-Owners* case. The trial court also awarded Spectrum attorney fees and interest on its unpaid medical bills under MCL 500.3148(1), concluding that Westfield's denial was unreasonable because *Miller v Auto-Owners* clearly established that PIP benefits can be recovered in maintenance cases under MCL 500.3105(1) even when the vehicle is parked.

Westfield appealed, but the Court of Appeals affirmed based on this Court's prior ruling in *Miller v Auto-Owners*. Westfield then sought leave to appeal to this Court, which granted oral argument on its leave application so that the parties could address whether *Miller v Auto-Owners* was a "viable precedent", and if so, whether it should be overruled.

ARGUMENT

I. MILLER V AUTO-OWNERS WAS CORRECTLY DECIDED OVER 3 DECADES AGO WHEN THIS COURT HELD THAT NO-FAULT PIP BENEFITS ARE OWED FOR MOTOR VEHICLE MAINTENANCE INJURIES UNDER MCL 500.3105(1).

A. No-fault insurance typically provides coverage for economic losses resulting from injuries sustained while maintaining motor vehicles.

In Michigan, the common law tort rules governing motor vehicle accident claims were eliminated when the Legislature adopted the No-Fault Act, MCL 500.3101, et seq. 1972 PA 294, effective March 31, 1973. As a result, Michigan has a bifurcated system which provides persons injured in motor vehicle accidents with two claims: 1) a first-party PIP benefits claim against the responsible no-fault insurer; and 2) a third-party liability claim against those responsible for causing the motor vehicle accident and the resulting injuries. The PIP benefits claim covers certain economic losses arising from the motor vehicle accident, including medical expenses, whereas the third-party bodily injury claim compensates the injured person for non-economic loss, i.e., pain and suffering, as well as some economic losses not fully covered by the first-party claim for no-fault PIP benefits.

This bifurcated system was adopted in Michigan because the Legislature recognized that the traditional tort system was not a very effective method of compensating injured persons from economic losses caused by motor vehicle accidents. Often, there was no viable negligence claim, and thus, medical bills and wage loss could not be recovered. In other cases, the costs of litigating a negligence claim greatly reduced the amount of funds available to be used towards such economic losses when the tort case was concluded. See generally, *Shavers v Attorney General*, 402 Mich 554, 578-579, 267 NW2d 72 (1978).

The No-Fault Act, in contrast, provided broad protection to all persons who sustain accidental bodily injuries "arising from the ownership, operation, maintenance or use of a motor vehicle" by compensating them for economic losses, while limiting tort liability for non-economic loss to motor vehicle accidents where more serious injuries are sustained. The No-Fault Act also sought to contain costs by eliminating the administrative burden on both parties that results from bringing a negligence claim to get medical bills and wage loss paid after a motor vehicle accident. See *Husted v Dobbs*, 459 Mich 500, 513, 591 NW2d 642 (1999) (quoting *Bradley v Mid-Century Ins Co*, 409 Mich 1, 54, 294 NW2d 141 (1980).

Under the No-Fault Act, PIP coverage was broad, whereas compensation was, by definition, limited – both in amount and duration – except for "lifetime medical benefits". This case seeks to limit that broad PIP coverage by eliminating all maintenance claims. The defense contends that such claims are beyond the scope of coverage intended under the No-Fault Act. It is a curious argument given that maintenance claims have been covered under the No-Fault Act for decades under this Court's ruling in *Miller v Auto-Owners*, supra. It is even more curious because maintenance claims typically have been covered under no-fault in other jurisdictions where a no-fault system has been enacted.[2]

[2]See generally, No-Fault and Uninsured Motorist Automobile Insurance, Vol. I, §3A.03(6)(a), Maintenance, at p 3A-46 (Matthew Bender, October, 1996), which states that "[m]ost no-fault statutes provide that injuries arising out of maintenance of a motor vehicle are within the scope of coverage", and cites in support of that conclusion, no-fault statutes adopted in New Jersey, Michigan, Florida, and Pennsylvania. In contrast, no jurisdiction is identified as having adopted a no-fault statute that does not cover injuries arising out of maintenance of a motor vehicle, or that limits such coverage, when the vehicle being maintained is not moving, to situations like those identified by the exceptions to the parked vehicle exclusion in Michigan under MCL 500.3106(1).

Clearly, maintenance claims are an integral of the broad protection intended for motor vehicle-related injuries under a system of no-fault auto insurance coverage.[3] Without such broad coverage, the goal of providing prompt, adequate reparation for economic losses to those persons injured in motor vehicle accidents is undermined. Unlike those situations where a person is assaulted by a third-party while occupying a motor vehicle or asphyxiated while using a motor vehicle as sleeping accommodations, injuries sustained while performing maintenance on a motor vehicle are clearly covered, as are other motor-vehicle related injuries such as loading/unloading and alighting/entering. If PIP coverage was limited to motor vehicle collisions only, legislators drafting no-fault statutes to be used in states like Michigan could have easily said so, but none of them did. Instead, no-fault laws similar in scope to UMVARA were enacted and maintenance was covered.

B. Traditional auto insurance provides liability coverage for injuries sustained due to negligence while a motor vehicle is being maintained.

As this Court noted in *Miller v Auto-Owners*, supra, the operative language for coverage purposes under Michigan's No-Fault Act is the phrase "ownership, operation, maintenance or use of a motor vehicle as a motor vehicle" under MCL 500.3105(1).[4] That

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[3]Maintenance claims are covered under the model law on which all no-fault laws are based. See 14 ULA 35, Uniform Motor Vehicle Accident Reparations Act (1972), at p 44, where UMVARA states at §2(a) that "every person suffering loss from injury arising out of the maintenance or use of a motor vehicle has a right to reparation benefits" and also, at §1(a)(6), that "[m]aintenance or use of a motor vehicle means maintenance or use of a motor vehicle as a motor vehicle, including, incident to its maintenance or use as a vehicle, occupying, entering into, and alighting from it."

[4]MCL 500.3106(1) is similarly worded, but says "parked vehicle as a motor vehicle" instead of "motor vehicle as a motor vehicle". MCL 500.3105(1) grants PIP coverage whereas MCL 500.3106(1) denies PIP coverage in parked vehicle cases unless an exception to the parked vehicle exclusion applies. There are 3 exceptions to the parked vehicle exclusion under MCL 500.3106(1). Maintenance is not one of them.

phrase was not new nor was it unique to Michigan's No-Fault Act. It is the same wording commonly used with liability coverage in most auto insurance policies to extend bodily injury coverage for all liability "arising out of the ownership, maintenance, or use of a motor vehicle as a motor vehicle." Traditionally, an insured under an auto insurance policy had coverage for any liability as a result of injuries sustained while maintaining motor vehicles, assuming, of course, that the injuries also resulted from some negligent act by an insured. Consistent with that understanding, this Court in *Miller v Auto-Owners,* supra, found PIP coverage for injuries sustained while maintaining motor vehicles and did not exclude maintenance injuries from PIP coverage simply because such vehicles are usually parked.

C. *Miller v Auto-Owners* recognized that MCL 500.3106(1) applies to parked vehicles only, not vehicles undergoing repairs.

This Court limited MCL 500.3016's application to parked vehicles in *Miller v Auto-Owners,* supra, by refusing to apply the parked vehicle provisions to motor vehicles undergoing repair, despite the fact that motor vehicles typically are parked while being maintained. In support of its holding, this Court resolved the "apparent tension" between MCL 500.3105 and MCL 500.3106 with regard to coverage for maintenance injuries and parked vehicles by concluding the two provisions were "complementary, not conflicting". Effectively, this Court in *Miller v Auto-Owners* saw parked vehicles and vehicles undergoing repair (which happened to also be parked) as two separate categories when it came to determining whether injuries suffered by a person were sufficiently motor vehicle-related.

As with UMVARA, injuries sustained while performing maintenance on a motor vehicle were clearly covered whereas injuries sustained in parked vehicle cases were required to show something more closely connected to the normal use of a motor vehicle,

such as being injured while loading or unloading, or exiting or entering, a motor vehicle.

While the opposing view also sees no conflict between these provisions, no effort is made to reconcile the contrary interpretation with the anomalous result that coverage would be excluded in all nearly all maintenance cases since maintenance is typically performed on parked vehicles only. Instead, the opposition strives mightily to conjure up a few examples where ostensibly injuries sustained while maintaining a motor vehicle would arguably also satisfy one of the exceptions to the parked vehicle exclusion. In each scenario, however, the fact that maintenance was also being performed is largely besides the point since the injuries were sustained during the course of some other acts that fulfills a parked vehicle exception. Thus, not only are such scenarios highly unlikely, it is equally improbable that the Legislature had in mind such odd cases when drafting MCL 500.3106.

Respectfully, the interplay between these two sections cannot be ignored. Nor can it be explained away by conjuring up implausible fact scenarios where coverage may exist for maintenance injuries because a parked vehicle exception also could be applied. Such unusual scenarios simply are not common enough to be what the Legislature intended. Without question, PIP benefits were designed to cover maintenance-related injuries also.

As this Court astutely observed, in *Miller v Auto-Owners*, supra, the clear policy implications behind both MCL 500.3105(1) and MCL 500.3106(1) support the view that PIP coverage in maintenance cases is not limited to those rare situations where a parked vehicle exception also applies. Thus, this Court correctly affirmed that PIP coverage exists for maintenance injuries under MCL 500.3105(1), and is not negated by MCL 500.3106(1).

This Court's interpretation of the No-Fault Act in *Miller v Auto-Owners* continues to be sound, even today. While the No-Fault Act's wording obviously could have been clearer

with regard to maintenance cases, there is no compelling result to "upset the apple-cart", so to speak, at this late stage in Michigan's no-fault jurisprudence. Even if there is some intuitive appeal to reading MCL 500.3105(1) and MCL 500.3106(1) differently, such a major change in PIP coverage should be left to the Legislature where, as in this instance, practitioners, insureds, insurers, and judges have all operated under the same basic understanding for over 3 decades that PIP coverage is available for maintenance injuries.

D. *Frazier v Allstate* and *LeFevers v State Farm* should have no bearing on the outcome in this case, because neither decision addressed whether PIP benefits can be recovered in motor vehicle maintenance cases.

In granting oral argument in this case, this Court asked the parties to address whether prior rulings by this Court in *Frazier v Allstate* and *LeFevers v State Farm* effectively overruled *Miller v Auto-Owners*, supra. In *Frazier*, the plaintiff claimed that he was injured while alighting from a motor vehicle (or alternatively, as a result of contact with permanently mounted equipment). In *LeFevers*, the plaintiff claimed that he was injured by permanently mounted equipment. Maintenance was not being performed in either case.

Clearly, neither case expressly overruled *Miller v Auto-Owners*, as neither case even discusses the case as a relevant precedent. Nonetheless, Westfield argues that a decision to adhere to this Court's prior decision in *Miller v Auto-Owners* would be inconsistent with what this Court said in recent cases such as *Frazier v Allstate* and *LeFevers v State Farm*.[5]

[5]Westfield also discusses this Court's decision in *Willer v Titan,* 480 Mich 1177, 747 NW2d 245 (2008), where the viability of a claim for PIP benefits arising out of injuries sustained while maintaining a non-moving motor vehicle was disputed, in part, because no exception to the parked vehicle exclusion under MCL 500.3106 applied. But, only Justices Markman and Corrigan subscribed to that viewpoint, whereas the other justices simply rejected the plaintiff's claims on the grounds that there was not a sufficient causal connection between the plaintiff's slip and fall on ice and the normal use of a motor vehicle, where she exited her vehicle to scrap ice from the windshield.

In actuality, both cases are easily distinguishable from this case because neither case involved injuries sustained while the plaintiff was maintaining a motor vehicle. Westfield finds *Frazier* and *LeFevers* instructive because both of them are parked vehicle cases and Westfield views this case as a parked vehicle case, not a maintenance case. In short, Westfield views both cases as support for its contention that all parked vehicles are excluded from PIP coverage, unless one of the exceptions is established. Because neither case involved a maintenance claim, however, Westfield's argument simply begs the question here, which is whether maintenance claims must also satisfy MCL 500.3106.

Fundamentally, a parked vehicle case and a maintenance case are not the same, because the Legislature, as this Court understood in *Miller v Auto-Owners*, supra, viewed parked motor vehicles as different from motor vehicles undergoing mechanical repairs. While a motor vehicle undergoing mechanical repairs, i.e., maintenance, is typically not moving, and thus, can be considered parked, by most conventional definitions, a motor vehicle undergoing mechanical repairs is not the same as a vehicle that is simply parked.

Westfield makes much of its contention that this Court's ruling in *Miller v Auto-Owners* effectively wrote the word "maintenance" out of MCL 500.3106 by not requiring that the plaintiff satisfy one of the exceptions to the parked vehicle exclusion in order to recover PIP benefits where the vehicle undergoing repair was not also being operated. But, Westfield ignores the fact that its interpretation similarly nullifies the use of the word "maintenance" in MCL 500.3105(1) for all injuries sustained while repairing a non-moving vehicle, which, of course, is almost every vehicle that ever undergoes mechanical repair.

Nonetheless, Westfield still claims that the clear, unambiguous meaning of the No-Fault Act's entitlement sections — MCL 500.3105(1) and MCL 500.3106(1) — is that PIP

benefits can be recovered only if the plaintiff is injured by repairing a motor vehicle that is being operated. Westfield further contends that the No-Fault Act's meaning is so clear, and unambiguous in this regard that there can be no other conclusion than that it is exactly what the Legislature intended. This Court disagreed when it decided *Miller v Auto-Owners* in 1981. Nothing has changed since that decision other than the justices sitting on this Court. The wording of the No-Fault Act remains the same in all relevant respects. It is no clearer today than it was in 1981. There is no reason to second-guess the Court's ruling.

E. To allow PIP benefits to be recovered in maintenance cases only when an exception to the parked vehicle exclusion under MCL 500.3106(1) can be established would be an "absurd result" because maintenance is almost always performed on motor vehicles that are not moving.

Westfield claims to have the interpretative "high ground" because, a plaintiff could satisfy MCL 500.3105(1) and MCL 500.3106(1) if injured while maintaining a moving vehicle. If so, the word "maintenance" under MCL 500.3105(1) would not be superfluous. While the absurdity of interpreting the No-Fault Act's entitlement provisions in that way seems obvious, it must nonetheless be discussed, as considerable time is devoted by Westfield to claiming that such an interpretation is precisely what the Legislature intended.

It has often been said that "statutes should be construed to avoid absurd results." See *Johnson v Recca*, 492 Mich 169, 193, fn 16, 821 NW2d 520 (2012) (quoting Justice Marilyn Kelly's dissenting opinion in *Cameron v Auto Club Ins Ass'n*, 476 Mich 55, 128-129, 718 NW2d 784 (2006). While some Justices have questioned in the past whether the absurd results doctrine is a legitimate consideration when a statute is being interpreted, see *People v McIntire*, 461 Mich 147, 152-160, 599 NW2d 102 (1999), there seems to be

some consensus that a result may be considered sufficiently absurd "if it is quite impossible that [the Legislature] could have intended the result . . . ." See *Johnson,* 492 Mich at 193.

Without question, the Legislature did not intend to limit PIP claims to situations where a moving vehicle is being repaired by adopting MCL 500.3105 and MCL 500.3106. Such an interpretation is absurd because it is "quite impossible" to conclude that a Legislature would have so limited recovery of PIP benefits in maintenance cases while adopting the world's most comprehensive system of motor vehicle accident reparations. The whole purpose of a no-fault system is to provide coverage for economic losses resulting from injuries sustained in motor vehicle-related accidents. Such coverage was intended to be broad enough to cover all situations where tort liability could be established. Thus, maintenance claims warranted PIP coverage just as there previously had been liability coverage for injuries negligently sustained while motor vehicles are being repaired.

Unlike other circumstances where a different reading of a statutory provision simply limits the viability of certain claims, here, Westfield's interpretation of the No-Fault Act runs directly counter to the express goals of adopting a no-fault system in the first place, namely, covering economic losses from motor vehicle accidents outside the tort system, and unduly limits coverage in maintenance cases to only the most unlikely injury scenarios. In contrast, affirming this Court's prior decision in *Miller v Auto-Owners* is consistent with goals underlying adoption of a no-fault system, as well as the scope of liability coverage that historically existed for motor vehicle accidents before no-fault was enacted. It further avoids the absurdity and likely confusion that would surround a contrary rule that denies insureds PIP benefits, unless the motor vehicle was moving while also being maintained.

II. EVEN IF *MILLER V AUTO-OWNERS* WAS NOT CORRECTLY DECIDED, IT SHOULD NOT NOW BE REVERSED, BECAUSE STARE DECISIS REMAINS THE PREFERRED COURSE ABSENT A SPECIAL OR COMPELLING JUSTIFICATION FOR OVERRULING PRECEDENT AND THERE SIMPLY IS NONE IN THIS CASE.

Reversing this Court's prior decision in *Miller v Auto-Owners*, supra, and thus, repudiating more than 35 years of allowing PIP benefits to be recovered in maintenance cases, obviously runs counter to well-established rules in Michigan favoring adherence to precedent under the doctrine of stare decisis. By definition, stare decisis means "[t]o abide by, or adhere to, decided cases." See Black's Law Dictionary (4th edition), p. 1577. Thus, generally speaking, stare decisis is "the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Robinson v City of Detroit*, 462 Mich 439, 613 NW2d 307, 320 (2000) (quoting from *Hohn v United States*, 524 US 236, 251, 118 S Ct 1969, 141 L Ed 2d 242 (1998)).

Stare decisis, however, is not to be applied mechanically so as to forever prevent this Court from overruling earlier erroneous decisions determining the meaning of statutes. *Id*., at 320 (citing *Holder v Hall*, 512 US 874, 944, 114 S Ct 2581, 129 L Ed 2d 687 (1994)). As this Court has often said, stare decisis is not an "inexorable command". *Id*. (quoting *Hohn*, supra, at p 251). It also is not "a mechanical formula of adherence to the latest decision". *Id*. (quoting *Helvering v Hallock*, 309 US 106, 119, 60 S Ct 444, 84 L Ed 604 (1940). Instead, stare decisis is an attempt "to balance two competing considerations: the need of the community for stability in legal rules and decisions and the need of courts to correct past errors." *Petersen v Magna Corp*, 484 Mich 300, 314, 773 NW2d 564 (2009).

In Michigan, there is a presumption that favors upholding precedent, but that presumption may be rebutted if there is a special or compelling justification to overturn precedent. See *Petersen v Magna Corp*, 484 Mich 300, 319-320, 773 NW2d 564 (2009). In determining whether or not a special or compelling justification exists in a specific case, a number of evaluative criteria may be relevant, but clearly, overturning precedent requires more than a mere belief that a case was simply wrongly decided. See generally, *Petersen*, supra; and *Brown v Manistee Co Rd Comm*, 452 Mich 354, 365, 550 NW2d 215 (1996).

In determining whether or not *Miller v Auto-Owners* should be overruled, several evaluative criteria identified by this Court previously in cases like *Peterson* are particularly relevant, including: (1) "whether the rule has proven to be intolerable because it defies practical workability," (2) "whether reliance on the rule is such that overruling it would cause a special hardship and inequity," (3) "whether upholding the rule is likely to result in serious detriment prejudicial to public interests," and (4) "whether the prior decision was an abrupt and largely unexplained departure from precedent." *Petersen*, 484 Mich at 320

A. Allowing PIP benefits to be recovered in maintenance cases is a clear, practical, and workable rule based on a common sense understanding that repairs are typically performed when a motor vehicle is not moving.

Allowing persons injured while maintaining motor vehicles to recover PIP benefits provides a clear, practical and workable rule, whereas Westfield's interpretation would lead only to confusion about whether or not PIP benefits are owed in a particular maintenance case. The exceptions to the parked vehicle exclusion, if applied to maintenance claims, would similarly raise questions about whether and when PIP benefits can be recovered. In recent years, there has been no shortage of appellate rulings in parked vehicle cases.

See this Court's prior rulings over the preceding 5 years, including not only *Frazier v Allstate* and *LeFevers v State Farm*, but also, *Williams v Pioneer Mut Ins Co*, 497 Mich 875, 857 NW2d 1 (2014), and its recent order granting oral argument on the leave application in *Kemp v Farm Bureau Gen Ins Co*, MSC Case No. 151719, February 5, 2016.

The same confusion would arise in maintenance cases if *Miller v Auto-Owners* is overruled. In contrast, the Michigan courts have seen relatively few maintenance cases since *Miller v Auto-Owners* was decided (aside from challenges to this Court's prior ruling). While clearly the existing rule favors PIP coverage, and insurers may not like a rule requiring that PIP benefits be paid, the risk of having to do so has long been taken into account from an actuarial standpoint and premiums have been collected to pay those claims. Westfield's objection is that the rule is too generous, not that it is unworkable, because, in fact, the current rule has been working, without problems, for over 3 decades. If the current rule is too generous, then the Legislature should be asked to change the law.

B. Insurers and insureds have long relied upon this Court's holding in *Miller v Auto-Owners* to conclude that PIP benefits can be recovered in maintenance cases, and overruling *Miller v Auto-Owners* now would only undermine the no-fault system's goal of ensuring prompt adequate reparation of economic losses caused by motor vehicle-related injuries.

Since this Court's seminal decision in *Miller v Auto-Owners* more than 35 years ago, no-fault insurers have charged premiums and no-fault policyholders have paid premiums which take into account the fact that PIP benefits are owed in maintenance cases. When insureds are injured while maintaining motor vehicles, PIP claims are accordingly submitted and compensation for economic losses incurred are requested and typically reimbursed. If *Miller v Auto-Owners* is reversed, insureds injured while maintaining motor vehicles will

be denied reimbursement for economic losses including work loss and medical bills. Without PIP coverage, many insureds will go bankrupt because of such economic losses. Overruling *Miller v Auto-Owners* will create a substantial hardship for those insureds, and it will be especially unfair and unjust because premiums were paid to cover such claims. It would also result in inequity for more than simply the insured PIP claimants because medical providers also would go unpaid in some cases or alternatively, be forced to accept lower rates of reimbursement from taxpayer-funded governmental benefits programs such as Medicaid and Medicare. Moreover, health insurers will be obligated to pay medical bills even when additional premiums were paid by PIP insureds for uncoordinated coverage.

C. Adhering to this Court's ruling in *Miller v Auto-Owners* will not be detrimental to the public's interests, because the number of maintenance claims is limited, and the no-fault system has already accounted for such claims by collecting premiums from PIP insureds. Further, *Miller v Auto-Owners* protects the public from having to bear the burden of paying such claims via governmental benefits programs.

Upholding this Court's prior ruling in *Miller v Auto-Owners* is not detrimental to the public's interests. The number of maintenance claims is small so it does not create an unreasonable burden on the no-fault system. Further, there is no evidence that eliminating maintenance claims (except when a parked vehicle exception is also applicable, will do anything to reduce the premiums paid to secure no-fault auto insurance coverage. Furthermore, the public also has an interest in seeing that economic losses are covered by private insurance where the alternative is providing support to injured persons through taxpayer funded government programs including Medicaid, Medicare, and Social Security. Simply put, upholding *Miller v Auto-Owners* will do nothing to harm the public's interests.

D. *Millers v Auto-Owners* did not depart from established Michigan law because it was the first opportunity that this Court had to address whether (and when PIP benefits can be recovered in motor vehicle maintenance cases. Overruling *Miller v Auto-Owners* now would be a radical departure from how the No-Fault Act has long been interpreted.

In addition to the three-part test typically applied by this Court in determining whether to overrule a prior decision, this Court has also taken into consideration whether this Court's prior ruling — the one that is now being reconsidered — itself constituted a departure from well-established law in Michigan. Clearly, that is not the case here, as this Court's decision in *Miller v Auto-Owners* was the first case addressing the issue of whether maintenance claims are covered under the No-Fault Act, regardless of whether an exception to the parked vehicle exclusion applies based on the facts involved in the case. There was no departure from established law in Michigan, because the No-Fault Act had only been recently adopted in Michigan, and many of its provisions were still being interpreted by the appellate courts, when this Court decided *Miller v Auto-Owners* in 1981. Clearly, overruling *Miller v Auto-Owners* now would be a far more radical departure than upholding what this Court decided previously in what was clearly a case of first impression.

III. IF THIS COURT REVERSES ITS PRIOR RULING IN MILLER V AUTO-OWNERS, ITS NEW RULE OF LAW SHOULD BE APPLIED PROSPECTIVELY ONLY.

While this Court has generally agreed that "judicial decisions are given full retroactive effect", it has also said that "a more flexible approach is warranted where injustice might result from full retroactivity." *Pohutski v City of Allen Park*, 465 Mich 675, 696, 641 NW2d 219 (2002) (citing *Hyde v Univ of Mich Bd of Regents*, 426 Mich 223, 240, 393 NW2d 847 (1986). More specifically, this Court has held that "a holding that overrules

settled precedent may properly be limited to prospective application." *Pohutski,* supra; *Lindsey v Harper Hospital*, 455 Mich 56, 68, 564 NW2d 861 (1997). Clearly, if this Court now overrules *Miller v Auto-Owners*, and thus, changes Michigan law governing recovery of PIP benefits in maintenance cases after more than 35 years of allowing such claims under MCL 500.3105(1), this Court's decision should be given prospective application only.

In *Pohutski*, supra, this Court was faced with a similar situation when a well-established rule of law permitting trespass-nuisance claims against the government was struck down by this Court on the grounds that such claims were precluded by the adoption of the statutory version of governmental immunity in Michigan under MCL 691.1401, et seq. In so ruling, this Court, in *Pohutski*, overruled several of its own precedents which had allowed trespass-nuisance claims against the government even MCL 691.1401, et seq, was enacted and exceptions to government immunity in Michigan were statutorily defined. Because this Court's ruling changed the law in Michigan regarding trespass-nuisance claims against the government, it was properly limited to prospective application only. Id.

In weighing whether or not to apply a decision retroactively, this Court has identified several factors that must be considered, including: 1) the purpose to be served by the new rule; 2) the extent of the reliance on the old rule; and 3) the effect of retroactivity on the administration of justice. *Pohutski*, 465 Mich at 695-696 (quoting *People v Hampton*, 385 Mich 669, 674, 187 NW2d 404 (1971). In civil cases, this Court has also given consideration to "whether the decision clearly established a new principle of law." Id. In Pohutski, this Court concluded that a new principle of law clearly was established. Similarly, if this Court now overrules *Miller v Auto-Owners*, it will be announcing a new rule of law in Michigan. Accordingly, such a ruling would warrant prospective application only.

CONCLUSION

In Michigan (as in other no-fault jurisdictions), it has long been well-established that persons injured while performing motor vehicle maintenance can recover PIP benefits. In *Miller v Auto-Owners*, this Court rejected the same argument that Westfield is asking this Court to adopt in this case, namely, that PIP benefits can be recovered in maintenance cases only if an exception to the parked vehicle exclusion under MCL 500.3106(1) applies. For decades, it has been understood that PIP benefits are owed in maintenance cases. There simply is no compelling justification to now reverse such a long-standing rule of law.

In *Miller v Auto-Owners*, this Court resolved the "apparent conflict" between MCL 500.3105(1) and MCL 500.3106(1), concluding that the Legislature's intent was to provide PIP coverage in maintenance cases under MCL 500.3105(1), while MCL 500.3106(1) simply clarified when PIP coverage exists in cases where a vehicle was parked and not being repaired. This Court's decision in *Miller v Auto-Owners* was not wrong, because clearly the Legislature intended to cover maintenance cases when it adopted such a comprehensive system of motor vehicle accident reparations. But, even if this Court was wrong, its decision should not now be reversed, where it has been relied upon for 35 years. Stare decisis is the "preferred course" and there is no reason to deviate from it in this case.

RELIEF REQUESTED

The Negligence Law Section of the State Bar of Michigan, as amicus curiae, respectfully requests that this Honorable Court continue to follow the precedent that it previously established more than 35 years ago in *Miller v Auto-Owners*, supra, when this

Court concluded that PIP benefits can be recovered under MCL 500.3105(1) of the No-Fault Act as a result of injuries sustained while maintaining a vehicle that is not moving. Alternatively, the Negligence Law Section asks that this Court apply prospectively any new rule of law that it may formulate now by overruling its prior decision in *Miller v Auto-Owners*.

Respectfully submitted,

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